

Regular Session, 2009

HOUSE BILL NO. 669

BY REPRESENTATIVE TALBOT

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

INSURANCE COMMISSIONER: Provides relative to regulation of third-party administrators by the commissioner of insurance

1 AN ACT

2 To amend and reenact R.S. 22:1641(1), 1651(F), (H), and (I), and 1656 and to repeal R.S.
3 22:1651(G), relative to third-party administrators; to provide for the definition of
4 third-party administrator; to delete certain insurers and adjusters from the list of
5 exclusions from the definition of third-party administrator; to provide for the
6 requirements for licensure and exceptions to licensure of third-party administrators;
7 to provide for the confidentiality of contracts between a third-party administrator and
8 an insurer; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 22:1641(1), 1651(F), (H), and (I), and 1656 are hereby amended and
11 reenacted to read as follows:

12 §1641. Definitions

13 The following terms shall have the following meanings:

14 (1) "Administrator" or "third-party administrator" or "TPA" means any
15 individual, partnership, corporation, or other person, except an employee of a fund
16 or plan that serves as an administrator, who directly or indirectly solicits or effects
17 coverage of, underwrites, collects charges or premiums from, or adjusts or settles
18 claims on residents of this state, or residents of another state from offices in this
19 state, in connection with life or health insurance coverage or annuities, ~~or who is~~
20 ~~engaged by any group self-insurance funds or plan of self-insurance providing~~

1 accident and health protection or worker's compensation coverage to its members or
2 employees to implement the policies of the trustees of the fund and to provide for
3 day-to-day management of the fund or plans of self-insurance providing accident and
4 health protection or self-insurance of worker's compensation coverage, or any
5 individual, partnership, corporation, or other person who contracts directly or
6 indirectly with a group self-insurance fund licensed pursuant to the provisions of
7 R.S. 23:1195 et seq. to provide claims adjusting, underwriting, safety engineering,
8 loss control, marketing, investment advisory, or administrative services to the fund
9 or its membership, other than bookkeeping, auditing, or claims investigation
10 services, except any of the following:

11 (a) An employer on behalf of its employees or the employees of one or more
12 subsidiaries or affiliated corporations of such employer.

13 (b) A union on behalf of its members.

14 ~~(c) An insurer which is authorized to transact insurance in this state, but only~~
15 ~~with respect to a fully insured policy lawfully issued and delivered in and pursuant~~
16 ~~to the laws of this state or another state or, an insurer which is authorized to transact~~
17 ~~insurance in this state and which has capital and surplus of at least fifty million~~
18 ~~dollars, as evidenced by the insurer's annual statement filed in accordance with R.S.~~
19 ~~22:571, as of December thirty-first of the preceding year.~~

20 ~~(d)~~ (c) An agent or broker licensed to sell life or health insurance in this
21 state, whose activities are limited exclusively to the sale of insurance.

22 ~~(e)~~ (d) A creditor on behalf of its debtors with respect to insurance covering
23 a debt between the creditor and its debtors.

24 ~~(f)~~ (e) A trust and its trustees, agents, and employees acting pursuant to such
25 trust established in conformity with 29 U.S.C. ~~Section~~ 186.

26 ~~(g)~~ (f) A trust exempt from taxation under Section 501(a) of the Internal
27 Revenue Code, its trustees and employees acting pursuant to such trust, or a
28 custodian and the custodian's agents or employees acting pursuant to a custodian

1 account which meets the requirements of Section 401(f) of the Internal Revenue
2 Code.

3 ~~(h)~~ (g) A credit union or a financial institution which is subject to
4 supervision or examination by federal or state banking authorities, or a mortgage
5 lender, to the extent they collect and remit premiums to licensed insurance agents or
6 authorized insurers in connection with loan payments.

7 ~~(h)~~ (h) A credit card issuing company which advances for and collects
8 premiums or charges from its credit card holders who have authorized collection if
9 the company does not adjust or settle claims.

10 ~~(i)~~ (i) A person who adjusts or settles claims in the normal course of that
11 person's practice or employment as an attorney at law and who does not collect
12 charges or premiums in connection with life or health insurance coverage or
13 annuities.

14 ~~(k) An adjuster licensed by this state whose activities are limited to the~~
15 ~~adjustment of claims.~~

16 ~~(j)~~ (j) A person who acts solely as an administrator of one or more bona fide
17 employee benefit plans established by an employer or an employee organization, or
18 both, for which the insurance laws of this state are preempted pursuant to the
19 Employee Retirement Income Security Act of 1974. ~~Such person shall comply with~~
20 ~~the requirements of R.S. 22:1651(G).~~

21 ~~(m)~~ (k) A person licensed as a managing general agent in this state, whose
22 activities are limited exclusively to the scope of activities conveyed under such
23 license.

24 * * *

25 §1651. Licensure required

26 * * *

27 F. An administrator is not required to hold a license as an administrator in
28 this state if the administrator is an insurer which is authorized to transact the business
29 of insurance in this state or if all of the following conditions are met:

1 (1) The administrator has its principal place of business in another state.

2 (2) The administrator is not soliciting business as an administrator in this
3 state.

4 (3) In the case of any group policy or plan of insurance serviced by the
5 administrator, fewer than one hundred certificate holders reside in this state.

6 * * *

7 H. ~~An~~ A licensed administrator shall ~~immediately~~ notify the commissioner
8 of any material change in ~~its ownership, control, or other~~ fact or circumstance
9 affecting its qualification for a license in this state within sixty days of the effective
10 date of the change. The notice shall include any documentation as the commissioner
11 may require. Changes in fact or circumstances shall include:

12 (1) Changes in control as defined in R.S. 22:692(3).

13 (2) Amendments to the articles of incorporation.

14 (3) Changes in officers and directors.

15 (4) Merger or consolidation of the administrator with any other person or
16 entity.

17 (5) Entering into any contract with an insurer where residents of this state are
18 included.

19 (6) Use of a trade name in this state.

20 I.(1) ~~An~~ A licensed administrator shall maintain and keep in full force and
21 effect a surety bond in an amount of one hundred thousand dollars issued by an
22 authorized surety company doing business in this state, or deposit with the
23 commissioner a safekeeping or trust receipt from a bank doing business in the state
24 or from a savings and loan association chartered to do business in this state
25 indicating that the administrator has deposited one hundred thousand dollars in
26 money, or bonds of the United States, the state of Louisiana, or any political
27 subdivision thereof of the par value of one hundred thousand dollars. The surety
28 bond or the money or the securities shall be held in trust for the benefit and
29 protection of and as security for all policyholders of the insurer and participants of

1 the plan with whom the administrator contracts. The provisions of this Paragraph
2 shall not apply to administrators required to post a surety bond in accordance with
3 provisions of ~~R.S. 23:1192(A)(1)~~ R.S. 23:1196(C)(1), in providing services for a
4 group self-insurance fund for workers' compensation insurance.

5 (2) No bond shall be required by the commissioner for any administrator
6 whose business is restricted solely to benefit plans which are either fully insured by
7 an authorized insurer or which are bona fide employee benefit plans established by
8 an employer or any employee organization, or both, for which the insurance laws of
9 this state are preempted by the Employee Retirement Income Security Act of 1974
10 (29 U.S.C. 1001 et seq.).

11 (3) If the provisions of this Subsection are met with a surety bond, the
12 administrator shall provide annually to the commissioner evidence that the surety
13 bond continues in full force and effect. This notice shall be provided no less than ten
14 days prior to the expiration or anniversary date of the surety bond.

15 * * *

16 §1656. Confidentiality; documents, information

17 ~~All information, documents, and copies thereof obtained by or disclosed to the~~
18 ~~commissioner, or its duly authorized representative; The terms and conditions of any~~
19 ~~contract between an administrator and an insurer, except for the identity of the~~
20 ~~contracting parties, and such other proprietary information as specifically identified~~
21 ~~by the administrator~~ shall be given confidential treatment, shall not be subject to
22 subpoena, and shall not be made public by the commissioner, the National
23 Association of Insurance Commissioners (NAIC), or any other person, except to the
24 insurance departments of other states or in any adjudicatory hearing or court
25 proceeding invoked by the commissioner in accordance with the provisions of this
26 Chapter.

27 Section 2. R.S. 22:1651(G) is hereby repealed in its entirety.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Talbot

HB No. 669

Abstract: Provides relative to licensure and regulation of third-party administrators by the commissioner of insurance.

Present law provides for the regulation by the commissioner of insurance of third-party administrators (TPAs) of insurance for life or health insurance coverage or annuities or self-insured plans of providing health and accident protection or workers' compensation coverage, with exceptions for employers, unions, certain types of agents or brokers, trustees, credit union plans, claims adjusters, and managing general agents (MGAs). Further provides for licensing of TPAs by the commissioner and provides that acting as such without a licence shall be subject to a \$5,000 fine per day, with each day considered as a separate violation. Sets a licensing fee of \$500 and requires applicants to submit certain information, including business organization documents, bylaws of the organization, names and addresses of personnel, annual financial statements, business and solicitation plans, and other pertinent information as may be required by the commissioner. Provides criteria to deny a license to a TPA.

Proposed law instead defines third-party administrators as those who handle life or health insurance coverage or annuities, or plans of self-insurance providing accident and health protection or self-insurance of workers' compensation coverage, or any individual, partnership, corporation, or other person who contracts directly or indirectly with a group self-insurance fund licensed as a trade or professional association to provide certain services to the fund or its membership.

Proposed law deletes certain exceptions as to who may be considered a third-party administrator, including:

- (1) An insurer which is authorized to transact insurance in this state, but only with respect to a fully insured policy lawfully issued and delivered in and pursuant to the laws of this state or another state.
- (2) An insurer which is authorized to transact insurance in this state and which has capital and surplus of at least \$50 million.
- (3) An adjuster licensed by this state whose activities are limited to the adjustment of claims.

Present law also provides exceptions to the requirement of licensure for a TPA which meets all of the following conditions:

- (1) Principal place of business in another state.
- (2) Not soliciting business as a TPA in this state.
- (3) Having fewer than 100 certificate holders residing in this state.

Proposed law additionally requires that such an administrator be an insurer authorized to transact the business of insurance in this state in order to be exempt from licensure.

Proposed law requires that licensed administrators notify the commissioner within 60 days of any material change affecting its qualification for licensing, to include:

- (1) Changes in control, defined in present law as the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.
- (2) Amendments to the articles of incorporation.
- (3) Changes in officers and directors.
- (4) Merger or consolidation of the administrator with any person or entity.
- (5) Entering into any contract with an insurer where residents of this state are included.
- (6) Use of a trade name in this state.

Proposed law further requires that only licensed administrators post a surety bond or deposit money or securities in trust. Provides that this requirement shall not apply to administrators required to post a surety bond in accordance with present law in providing services for a group self-insurance fund for workers' compensation insurance. Further requires that the administrators posting a bond under present law relative to TPAs to provide the commissioner with evidence of the bond's effectiveness on an annual basis no later than 10 days prior to its expiration or anniversary date.

Present law protects the confidentiality of all information disclosed to the commissioner by an administrator.

Proposed law changes the confidentiality protection from all information, documents, and copies disclosed to the commissioner to terms and conditions of any contract between an administrator and an insurer as well as such other proprietary information as specifically identified by the administrator, except for the identity of contracting parties.

Present law provides an exception from the requirement of licensure for those persons acting solely as the administrator of one or more bona fide employee benefit plans established and maintained by an employer or employee organization, or both, for which the insurance laws of the state are preempted pursuant to the Employee Retirement Income Security Act of 1974 (ERISA). Further requires, however, that those persons so preempted register with the commissioner annually to verify their status.

Proposed law deletes present law but retains exception for such persons from the definition of a TPA.

(Amends R.S. 22:1641(1), 1651(F), (H), and (I), and 1656; Repeals R.S. 22:1651(G))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Insurance to the original bill.

1. Additionally defines TPAs as those who handle plans of self-insurance of workers' compensation coverage
2. Deletes requirement that TPAs notify the commissioner of changes in ownership or control and instead requires notification of changes in control as defined in present law.

3. Extends confidentiality to such other proprietary information as specifically identified by the administrator.